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No. 94-238

In The

Supreme Court of the United States

October Term, 1994

SISTERS OF THE HOLY FAMILY OF NAZARETH, A TEXAS CORPORATION,

Petitioner,

-against-

CITY OF GRAND PRAIRIE,

Respondent.

On Petition For A Writ Of Certiorari
To
The Supreme Court Of Texas

PETITIONER'S REPLY AND MOTION TO DIRECT PETITION TO THE COURT OF APPEALS, FIFTH DISTRICT OF TEXAS AT DALLAS

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Petitioner herein respectfully responds to the BRIEF IN OPPOSITION FOR RESPONDENT CITY OF GRAND PRAIRIE, TEXAS, and, if appropriate, moves this Court to direct the Petition for Writ of Certiorari to the Court of Appeals, Fifth District of Texas at Dallas.

JURISDICTION

If it would be more appropriate to bypass the Supreme Court of Texas, and direct this Petition for Writ

of Certiorari to the Court of Appeals, Fifth District of Texas at Dallas, this can be done from the information that is contained in the Petition for writ of certiorari. In fact, the Conclusion And Prayer For Relief in the Petition for writ of certiorari "respectfully pray[ed] that this Court: grant this application for writ of certiorari, *reverse the holding of the Appellate Court* insofar as it does not allow Petitioner to recover its attorney's fees . . . " (emphasis added.)

Under 28 U.S.C. § 1651, the Supreme Court has the authority to issue any writ that may be necessary.

Under 28 U.S.C. § 1653, the Supreme Court has the authority to permit an amendment to the Petition for writ of certiorari to show that it has jurisdiction; "[E]very Court of Appeals that has considered the scope of § 1653 has held that it allows appellate courts to remedy inadequate jurisdictional allegations, but not defective jurisdictional facts." *Newman-Green, Inc. v. Alfonzo-Larrain,* 490 U.S. 826, at 832 (1989).

If this Court is of the opinion that Petitioner should ask that the petition for writ of certiorari be directed to the Court of Appeals, Fifth District of Texas at Dallas, Petitioner moves the Court to redirect the writ.

REASONS FOR GRANTING THE WRIT

Petitioner adopts the same arguments and reasons which it set forth in its Petition for writ of certiorari.

Although the Respondent would have this Court believe that, "under article 1105b, Sisters was allowed to

– and did – withhold payment pending review of the validity of the assessment" (Brief in Opposition for Respondent City of Grand Prairie, Texas, at 8), the undisputed facts show that during the entire "review" period (almost four years of vigorous litigation), the City:

1. Maintained an illegal, and unconstitutional, lien on the property;

2. Sent monthly statements, requesting payment of past due amounts, as well as interest; and,

3. Hired a law firm to send a demand letter, by certified mail, threatening a foreclosure suit, and suggesting that the Landowner remit payment immediately to the City of Grand Prairie.

Even though the City never collected money from Petitioner for the illegal assessment, the City stipulated that its lein interfered with Petitioner's title to the property. (Stipulation #35 – Petition for Writ of Certiorari, at App. 33.) Due process requires that the City of Grand Prairie provide some type of just compensation for the imposition, and maintenance, of the illegal lien. The City has not done so. As a religious institution, Petitioner only sought to recover (as just compensation) the reasonable attorney's fees, and costs, incurred in restoring clear title to its property. The trial court's Judgment should be upheld.

CONCLUSION AND PRAYER FOR RELIEF

Petitioner, Sisters of the Holy Family of Nazareth, a Texas Corporation, respectfully prays that this Court grant Petitioner the right to direct its petition for writ of certiorari to the Court of Appeals for the Fifth District of

Texas, at Dallas, if that be the appropriate Court to which the writ should be directed; that this Court grant the application for writ of certiorari, reverse the holding of the Appellate Court insofar as it does not allow Petitioner to recover its attorney's fees, affirm the decision of the trial court below, remand the case so that the trial court may award additional attorney's fees for presenting this case to this Court, and grant such other and further relief to which Petitioner may be entitled.

Respectfully submitted,

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